

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JAMES L. FISHER, MYRTLE )  
HUMPHREY and MICHELLE GABARA, )

Plaintiffs, )

v. )

TOVEY GOYNES, JAMES W. )  
MCKENZIE, ROBERT P. HOUSTON, )  
and RYAN MAHR, Sued in their )  
Individual and Official )  
Capacities, )

Defendants. )

8:07CV378

MEMORANDUM AND ORDER

Plaintiffs have moved to stay this case pending further review of plaintiffs' claims. Plaintiffs argue that this is a complex matter for which additional time is needed to determine and clarify plaintiffs' positions. Defendants oppose the stay.

I shall deny the stay. The case needs to move forward. [Fed. R. Civ. P. 11](#) required plaintiffs' counsel to conduct a reasonable investigation of plaintiffs' claims before undertaking representation in this case, and her signature on any "paper" in the case is taken as a certification that investigation and research have been done. Rule 11 states in pertinent part:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

The rule provides sanctions for failure to comply with its requirements. Rule 11(c).

If present counsel cannot comply with the provisions of Rule 11 without assistance, she should associate with co-counsel who can provide that assistance. Alternatively, she should withdraw. A delay will not solve that situation or resolve the case.

IT THEREFORE HEREBY IS ORDERED:

1. The motion for stay, filing no. [77](#), is denied.
2. Counsel are given thirty days from this date to complete and file their Rule 26 planning report.

DATED this 6<sup>th</sup> day of April, 2009.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge